IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 295 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIAZMOHMED IBRAHIM SHAIKH

Versus

ORIENTAL INSURANCE CO.

Appearance:

1. Civil Revision Application No. 295 of 2004

MR AG VYAS for Petitioner No. 1

DS AFF.NOT FILED (R) for Respondent No. 1

DS AFF.NOT FILED (N) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 21/10/2004

ORAL JUDGEMENT

1. Niazmohmed Ibrahim Shaikh, petitioner - original claimant has filed this Civil Revision Application

challenging the judgment and order dated 21st June, 2004, passed by the Motor Accident Claims Tribunal (Main), Ahmedabad (Rural) below application Exh.230 in M.A.C.T. Application No.1265 of 1996. The aforesaid application was filed on 4th September, 2004.

2. The petitioner has filed an application before the trial court with a prayer that he may be allowed to withdraw Rs.2,74,000/- a lumpsum amount by releasing Fixed Deposit Receipt. Against that the learned trial Judge granted permission for only Rs.25,000/- by order dated 21st June, 2004.

3. Mr.Vyas, learned advocate for the petitioner states that the Motor Accident Claim Tribunal by judgment and order dated 21st October, 2003, partly allowed the claim petition of the petitioner by directing the opponents to pay Rs.2,12,900/- together with proportionate costs and interest at the rate of 9% per annum from the date of application till realisation. In all Rs.2,74,000/- is invested in Fixed Deposit Receipts.

3.1 Mr.Vyas, learned advocate for the petitioner has stated that the petitioner's wife is suffering serious medical ailment disabilities and, therefore, he requires some more amount. In support of the same, he has produced a certificate dated 1.9.2004 issued by Dr.Priyank Mehta, Researve Medical Officer, Aastha Oncology Associates, Medi-Surge Hospitals, Ellisbridge Ahmedabad, and also filed affidavit of one Dr.Deepak Vitthaldas Patel.

3.2 Mr.Vyas, learned advocate for the petitioner has relied upon judgment of Apex Court in the case of General Manager, Kerala State Road Transport Corporation Vs. Susamma Thomas and others reported in 1994 ACJ 1, and also Larger Bench Judgment of this Court in the case of Jayantilal Ambalal Parmar Vs. Gujarat State Road Transport Corporation and another reported in 94(2) GLR 1308.

4. I have considered judgment of the Apex Court particularly guidelines stated therein. It may be noted that in this case the wife of the claimant has a serious ailment regarding kidney and for that she requires urgent operation. The petitioner has produced certificate from Medi-surge Hospital as well as affidavit of one Dr.Deepak Vitthaldas Patel of Medi-surge Hospital. I have gone through the affidavit in this behalf, and I am satisfied that out of Rs.2,74,000/-, the trial court has already permitted of Rs.25,000/-, over and above in the interest

of justice and on humanitarian ground, if petitioner is permitted to withdraw Rs.1,50,000/- (Rupees One Lac Fifty Thousand) to meet with the medical expense which have been shown in the affidavit and the certificate in this behalf, the same will be in the interest of justice. It may be noted that the Full Bench of this Court has also considered the same and had also put up the said guidelines in this behalf. It may be noted that this is also a case of emergency, and to meet with such contingency, I am ordering substantial amount in the interest of justice. It may be noted that this case is in peculiar facts and circumstances of the case, the same cannot be treated as a precedent in the future matter.

6. In view of the aforesaid observations and directions, this Civil Revision Application is disposed of with no order as to costs. Rule is discharged to that extent.

(K.M. Mehta, J.)

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